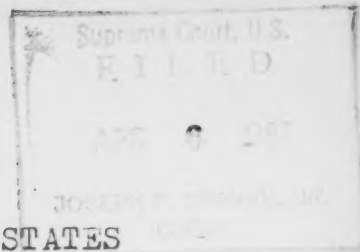


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87-580①



NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

RE:

EARLENE POLYAK
Petitioner

PETITION FOR EXTRAORDINARY WRIT
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

60 PM



QUESTIONS PRESENTED

1. Is the District Judge's order enjoining pro se litigant from filing complaints grounded in the denial of due process and the deprivation of civil and constitutional rights and laws against various persons in the United States District Court, Columbia, Tennessee, abuse of discretion and unconstitutional?

2. Is the District Judge's styling of this appeal against various persons in disregard of Notice of Appeal to "Closing of Cases and Enjoin" in Order of May 2, 1986, intentional prevention of filing further cases as res judicata and abuse of discretion?

3. Is the dismissal by the District Judge of complaint against State Trial Judge as "judicial Immunity" for denial of appeal pursuant to Amend of Rule 5(a) TRAP abuse of discretion, which is sanctioned as all of pro se litigants appeals in the Court of Appeals?

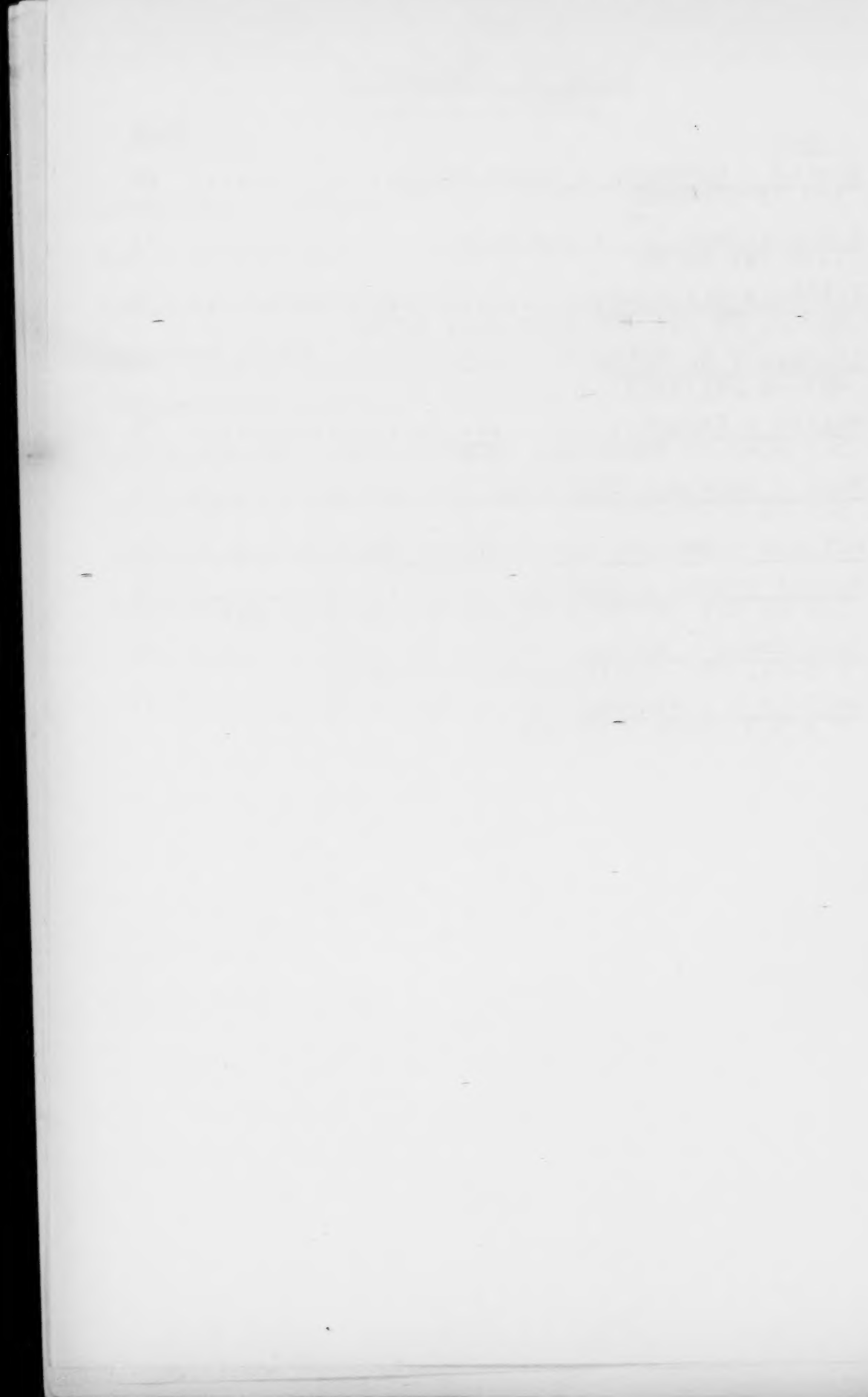
4. Should pro se litigant have been given show cause with time and place prior to District Judge enjoining from filing complaints, and is this action abuse of discretion?

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RELIEF SOUGHT

Petitioner Earlene Polyak, seeks issuance of an extraordinary writ under U.S.C. 1651(a), from this Honorable Court to review the affirming of Court of Appeals of the abuse of discretion by the United States District Judge. She seeks withdrawal of order of November 13, 1985, enjoining her from filing further complaints involving the denial of due process and the deprivation of civil and constitutional rights and laws. Petitioner is handicapped and the loss of her property is an irreparable damage and the loss of a right to never be regained to her retirement home.

Petitioner seeks review of all cases involving her two properties located approximately thirty-two south of the "New Saturn Plant" Spring Hill, Tennessee. She seeks withdrawal of the District Judge's Order of May 2, 1987, closing cases involving said properties.

Petitioner's right to her property is supported by Tennessee Statute and case law, and right to relief for deprivation under 1983, right to sue 1981, right to inherit 1983, Fifth and Fourteenth Amendments.

EXTRAORDINARY WRIT

The issuance by this Court of extraordinary writ authorized by 28 U.S.C. 1651(a), will be an aid to the Court's appellate jurisdiction. The Court of Appeals affirms the District Court's disregard of pro se litigant's attempt to join cases in the United States District Court after she was denied due process and deprived of civil and constitutional rights and laws in state court and sought federal protection under diversity of citizenship.

Petitioner filed Complaint No. 1:85-0116, Earlene Polyak v Jim T Hamilton and the Circuit Court of Lawrence County, joined to 1:85-0116, under 28 U.S.C. 1441(c), Counter-claim, Earlene v Buford Evans & Sons, No. 1:85-0120; Earlene Polyak v Thomas Stack Henry Henry & Stack No. 1:85-0125, and Earlene Polyak v William Boston, Boston Bates & Holt No. 3:85X-108.

Petitioner moves for docketing of corrected writ and applies for Oral Argument before this Honorable Court.

NO.
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

RE:

EARLENE POLYAK
Petitioner

VS

THE HONORABLE THOMAS A WISEMAN
ON MAY 2, 1986, CLOSING CASES NO. 1:85-
0082, 1:84-0083, 1:85-0116, 1:85-0120,
1:85-0125, and 3:85X-108, AND ENJOINING
APPELLANT FROM FILING FURTHER CASES IN
THE UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner Earlene Polyak, prays ~~extraordinary~~
writ of certiorari under 28 U.S.C 1651(a) issue
to review the order of the United States Court
of Appeals for the Sixth Circuit affirming the
order of the District Court in the above and
related cases.

Cases: Appeal No. 84-6090(D.C. 1:84-0082),
Frank Hulen and Wilma Lesnansky v Earlene Polyak,
consolidated over Petitioner's objections with
Appeal No. 85-5032/5101/5147(D.C. 1:84-0083),
Earlene Polyak v Frank Hulen and Wilma Lesnansky.

Cases: Appeal No. 85-6134(D.C. 1:85-0016), Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County, Tennessee. And cases joined to 1:85-0116 under 28 U.S.C 1441(c), Appeal No. 85-6135(D.C. 1:85-0120), Buford Evans v Earlene Polyak, D.C. No. 1:85-0125, Earlene Polyak v Thomas Stack, Henry Henry & Stack and related appeal No. 85-5199, and D.C. 3:85X-108, Earlene Polyak v William Boston, Boston Bates & Holt, and related Appeal No. 86-5916.

Cases directly related: No. 86-5160, Re: Earlene Polyak, Writ of Mandamus to schedule Jury Trial v William Boston, Boston Bates & Holt, and No. 86-5162, Re: Earlene Polyak, Writ of Mandamus to schedule Jury Trial Thomas Stack, Henry Henry & Stack.

Related Supreme Court cases: 85-1975, 85-1991, 86-35, 85-182, 86-667, and 86-1025.

OPINIONS BELOW

The opinions of this and directly related cases are set forth in Appendix A. And the opinions of related cases are set forth in separately bound Appendix pursuant to 1(f)(h)

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit was entered on November 24, 1986. The order denying Petition to Rehear En Banc was denied on January 7, 1987. And this petition is being submitted within ninety(90) days thereof.

The jurisdiction of this Court is invoked pursuant to Diversity of Citizenship, Article III, Sec. 2 5 U.S.C 504, Equal Access to Justice.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

No... person shall be deprived of life, liberty of property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend. V cl 3&4.

The pertinent portion of the Eight Amendment provides as follows:

... nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. Amen VIII cl 2&3.

The pertinent portion of the Fourteenth Amendment provides as follows:

No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

28 U.S.C. 1443... Civil Actions commenced in State Court may be removed by defendant to District.

- (1) Against any person who is denied or cannot enforce in the Courts of such State a right under any law providing for equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.
- (2) For any act under color of authority deprived from any law providing for equal rights...

42 U.S.C. Sec. 1981: All persons within the

jurisdiction of the United States shall have the same right in every state to sue... to the full and equal benefit of all laws.

42 U.S.C. Sec. 1982:

All citizens of the United States shall have the same right in every State... to inherit hold purchase lease and convey real and personal property.

42 U.S.C. Sec. 1983:

Every person, who under the color or any Statute, ordinance, regulation custom or usage of any State... subject or caused to be subjected any citizen of the United States to the deprivation of any rights preiveleges or immunities secured by the constitution and laws, shall be liable to the party injured in the action at law in equity or other proceedings for the parties.

28 U.S.C. 1254(1):

By writ of certiorari ... before or after... judgment or degree....

28 U.S.C: 2403

(b) In any action,... where the constitutionality of a statute of that state affecting public interest is drawn in question....

STATEMENT OF THE CASE

Petitioner seeks review of the order dismissing appeal in which she believes that the United States District Court for the Sixth Circuit has so far sanctioned abuse of discretion by the Honorable Thomas A. Wiseman Jr., in the United

States District Court, Middle District of Tennessee, Columbia, Division, as to call for an exercise of this Court's power of supervision. She believes that she has been denied due process, equal rights and deprived of civil and constitutional rights and laws in the Courts of Tennessee and sought the protection of diversity of citizenship in the United States District Court, Nashville, Tennessee. But her complaints were assigned to Judge Wiseman and handled by the Columbia, Division of the United States District Court.

Judge Wiseman dismissed Complaint No. 1:84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak, without hearing on November 17, 1984. This case was a Petition to Remove Case No. 1974, from the Chancery Court of Lawrence County, Tennessee, submitted on October 1, 1984 (See Supp.A²p.1-27).

Petitioner does not have any knowledge or expertise in the legal profession, but she assumed her case when she suspected that Thomas Stack, Henry Henry & Stack were not representing her best interest on December 19, 1983. She believes that William Boston, Boston Bates & Holt failed to protect her right to due process and the

deprivation of civil and constitutional rights and laws when they divided their loyalties after represent her from 1976, and appeared against her in representation of Frank Hulen and Wilma Lesnansky on July 29, 1983(App. A ²p.2,3 4).

Petitioner called the United States District Court in Nashville, from a telephone booth and Judge Wiseman answered the telephone during the summer of 1984. She explained that she was having problems with lawyers and she understood from this tepephone conversation that she could petition the United States District Court to hear her case.

Case No. 1:84-0082(1974) involves the property in settlement by agreement initiated by Frank Hulen and Wilma Lesnansky within one week after Mrs. Rena Hulen's death on January 9, 1976, As a result of this agreement, Petitioner and her husband, Alex Polyak have restored and maintained the house on her agreed partition for a retirement home. Settlement by agreement is supported by Tennessee Statute (App. A²p. 5 6 7 8 9). Petitioner has possession of this retirement home and pays all of the cost of maintenance to this day.

The Honorable Jim Hamilton verbally ordered

property sold within two hours while the jury was out on another trial in the State Court, Columbia, Tennessee on July 29, 1983. Information about settlement by agreement was withheld as Wilma Lesnansky did not come to the hearing, and Alex Polyak did not get to testify. Petitioner was taken across County lines while acutely ill from 102 degree heat-wave and nationwide warning to heart patients (Supp. A²p.1-27).

Judge Hamilton followed verbal order to sell with written order prepared by William Boston, Boston, Bates & Holt, which did not allow any money for seven(7) years restoration of house(App. A²p.10 11). Petitioner demanded that Mr. Stack move for a New Trial for the second time(App.A²p.10).

Motion for New Trial or for Alteration of Amendment of Judgment resulted in Judgment, which Judge Hamilton instructed Petitioner to appeal, and unappeable judgment prepared by Boston Bates & Holt and signed by Charles Holt and Judge Hamilton on December 20, 1983. Thomas Stack Henry Henry & Stack entered order of relief signed by Thomas Stack, William Boston and Judge Hamilton on January 10, 1983(App. A²p.16). As a result of

pro se litigant appealing unappeable judgment her appeal was dismissed on April 26, 1984(App. A²p.19). The Application for Permission to Appeal to the Court of Appeals and Supreme Court of Tennessee was denied and the appeal to this order has never been heard, and would only be heard after the sale of Petitioner's investment in restoration and maintenance in property(App. A.²p. 21).

Judge Hamilton signed Nonsuit No. 10611, William Boston, Boston Bates & Holt, and against Thomas Stack Henry Henry & Stack No. 10612, with what appears to be dismissal of Petitioner's objection to the sale of her property in Chancery Court on Nonsuits in Circuit Court on October 9, 1984. Petitioner was not in either Court on this date (App. A³p.19 20 21 22 23).

Petitioner believes that she was again subjected to a trial under the color of usage of the State and deprivation of civil and constitutional rights and laws in law suit to force her to pay Buford Evans & Sons for survey of her land without her knowledge or permission on December 26, 1984(App. A³p. 1). No. 10647, was scheduled for April session of Court in 1985, but Judge Hamilton

ordered Petitioner to trial on December 26, 1984. She was ill due to acute bronchitis and heart failure. Petitioner submitted Motion for continuance supported by physician's statements and Affidavit. Since Petitioner believed that Judge Hamilton was prejudiced toward as all petitions motions and requests were disregarded a Motion for Disqualification was submitted(App. A³p.11). denied on December 26, 1984(App. A³p. 13 15 16 17 18 19).(Petitioner believes it is evident that Judge Hamilton prejudiced in Transcript of Proceedings when she stated cruel and unusual punishment p.16, Judge comes to defense of Mr. Stack p. 15, 16, when she tries to project respect p.17 describes partition suit p.18).

After Petitioner submitted Application for Permission to Appeal to the Court of Appeals and then to the Supreme Court of Tennessee, Judge Hamilton finally signed judgment on August 7, and Amended Judgment on August 22, 1985. Judge Hamilton denied Motion to Forward Records to the Court of Appeals on November 7, 1985(App. A³p30).

Petitioner submitted complaint against Jim T. Hamilton, Individually and in his Judicial Capacity

as Circuit Judge, and the Circuit Court of Lawrence County, to the United States District Court No.1: 85-0116, filed on November 8, 1985. She believes that she was denied due process and the deprivation of civil and constitutional rights and laws under the color of usage of state. Petitioner believes Judge Hamilton used the amendment of Rule 5(a) Tennessee Rules of Appellate Procedure, which deletes the requirement that copy of Notice of Appeal be filed with the Court of Appeals(App. A³p.27). She believes the amendment of this rule allows Judge or Clerk to determine who can appeal by forwarding record and it allows for discrimination against race, sex, non-resident and pro se litigant.

Petitioner joined Counter-claim against Buford Evans & Sons 1:85-0120, to 1:85:0116 under 28 U. S.C.1441(d) joined William Boston, Boston Bates & Holt No. 3:85X-108, which Judge Wiseman denied filing, and Thomas Stack Henry Henry & Stack No. 1:85-0125 (App. C p. 9).

Judge Wiseman dismissed No. 1:85-0116, stating that Judge Hamilton had "judicial Immunity" within five days without hearing, and enjoined Petitioner from filing further complaints involving her

property in the United States District Court(App. A. 3p.35 36). Judge Wiseman dismissed complaint against Buford & Sons without hearing No.1:85-0120. Buford Evans alleges that Mr. Stack retained him to survey Petitioner's property. Judge Wiseman did not allow complaint against William Boston, Boston Bates & Holt filed.No. 3;85X-108, but Judge allowed complaint against Thomas Stack Henry Henry & Stack filed on allegations of negligence and malfeasance.No. 1:85-0125. Judge Wiseman disregarded motions to schedule Jury Trial in Thomas Stack Henry Henry & Stack(App. C p. 9).

Petitioner submitted a second complaint William Boston Boston Bates & Holt, but Judge Wiseman disregarded filing second complaint.The Clerks in the District Court misfiled Notice of Appeal to Judge Wiseman's Denial of Request to Reconsider Denial of Restraining Order submitted on February 1,1986 to February 7, which made appeal on day late and all of Petitioner's motions to correct filing date were disregarded by Judge Wiseman(App. A¹p.6).

Finally, Petitioner submitted Writ of Mandamus to schedule Jury Trial and correct filing date on

appeal as copy received in Court of Appeals on February 3, 1986, in Thomas Stack Henry Henry & Stack No. 86-5460, which was denied on June 13, 1986(App. A ¹p. 11). and Petition to Rehear was denied on July 23, 1986(App. A ¹p. 12).

Petitioner submitted a Writ of Mandamus to file complaint against William Boston, Boston, Bates & Holt and schedule a Jury Trial No. 86-5462, which was denied on June 13, 1986(App. A ¹p. 13). Rehear denied on July 23, 1986(App. A ¹p. 16).

The petitions for writ of mandamus were submitted to the Court of Appeals on April 24 and 25, 1986. Judge Wiseman sent letter on April 30, 1986, to John P. Hehman, Clerk of Court of Appeals in answer to Thomas Stack Henry Henry & Stack No. 86-5460, stating a refusal to change date of appeal to February 6, 1986, to make it timely, but disregards mention of scheduling jury trial(App. A ¹p. 11).

In the letter answering writ of mandamus No. 86-5462, William Boston Boston Bates & Holt, to John P. Hehman, Judge Wiseman explains the order of November 23, 1985, in which Petitioner enjoined from filing further complaints in the District Court, " That order was entered because of previous

filings of Mrs Polyak against various persons in this Court."(App. A¹p. 12) Judge Wiseman presides in the division of the United States District Court located in the same building with State Court in Columbia, Tennessee. Judge Hamilton presides over State cases and the above lawyers handle state and federal cases in the same building. Petitioner believes Judge Wiseman is referring to these various persons in this Court.

Petitioner has learned that Judge Hamilton has undergone operation for removal of tumor from front skull area, in Lawrence County" Advocate."

Judge Wiseman encloses order with answer to Writs dated May 2, 1986, in which he rescues himself, but order fronted with RE: No. 1:84-0082; 1:84-0083; 1:85-0116; 1:85-0120; 1:85-0125 and 3:85X-108, and states"closed cases"and"enjoining her"(App. A¹p. 1 & 2)Petitioner thought she appealed order enjoining in Hamilton No. 85-6134(1:85-0116). but Court of Appeals did not consider appeal, and she underatands closing cases final appealable.She sty ed appeal" RE: Earlene Polyak v THE HONORABLE THOMAS WISEMAN'S ORDER OF May2, 1986, CLOSING CASES NO.1:84-0082,1:84-0083, 1:85-0116, 1:85-0120, 1:85-

0125, and 3:85X-108, AND ENJOINING APPELLANT FROM FILING FURTHER CASES IN THE UNITED STATES DISTRICT COURT.

Judge Wiseman styled appeal to reflect that appeal was against various persons in the above cases, from Columbia Court. Petitioner submitted motion to restyle appeal as she intended, but the Court of Appeals denied motion and dismissed appeal No. 86-5536(App. A

REASONS WHY WRIT SHOULD ISSUE

I. THE UNITED STATES COURT OF APPEALS HAS SO FAR SANCTIONED THE ABUSE OF DISCRETION BY THE DISTRICT COURT AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION

1. The Court of Appeals affirms the dismissal of pro se litigant's complaints against various persons by the District Judge without hearing and the deprivation of civil and constitutional rights and laws.

The United States District Court affirms the dismissal of pro se litigant's cases by Judge Wiseman without hearing, weighing evidence, consideration of facts involving various persons in the division of the United States District Court, Columbia, Tennessee.

The Court of Appeals affirmed the dismissal by Judge Wiseman of Petitioner's complaint against

Jim Hamilton for the denial of due process and the deprivation of civil and constitutional rights and laws within five days of filing for "judicial immunity" and enjoined Petitioner from filing further complaints in the United States District Court on November 13, 1986., No. 1:85-0116.

Congress intended 1983 to be an independent protection for federal rights and there is nothing to suggest that Congress intended to expand common-law doctrine of judicial immunity to insulate the state judge completely from federal collateral review. United States v Detroit, 200 US 321 327 26 S Ct 282 287 50 L Ed 499.

Petitioner believes that Judge Hamilton denied motion to Forward Records to timely Notice of Appeal in Buford Evans v Earlene Polyz No. 10647, under the color of usage of the State of Tennessee 42 U.S.C. 1983, and in disregard of the laws of Tennessee. "Appeals to final decisions are of right and lie to Court of Appeals, Court of Criminal Appeals and to the Supreme Court Rule 3, Tennessee Rules of Appellate procedure."

Judge Wiseman dismissed Petition to Remove and Counter-claim against Buford Evans & Sons joined to 1:85-0116 under 28 U.S.C. 1441(c) without hearing and remanded back to the state on November 20, 1985. Petition was submitted under

28 U.S.C 1443(1)(2). Court of Appeals affirmed dismissal by dismissing prior to brief, allowed Petition to Rehear and dismissed again in docket control. No. 85-6135(D.C. 1:85-0120)(10647)

Petitioner believes Judge Hamilton used amended Rule 5(a) Tennessee Rules of Appellate Procedure which deleted the requirement a copy of the Notice of Appeals be filed with the Court of Appeals. Petitioner believes this deleted rule is in conflict with Tennessee Statute and allows Clerk or Judge to determine who is allowed to appeal and discrimination against race, sex, non-resident and pro se litigant, and that it is unconstitutional. After Judge Hamilton dismissed timely Notice of Appeal by denial of motion to forward records on November 7, 1985, Petitioner sought the protection of the District Court under diversity of citizenship, Judge Wiseman dismissed.

Appellant's do not contend that state officials are immune from suits to restrain unconstitutional acts undertaken in their official capacities. The law clearly recognizes the right of an interested party to force state officials to act in accordance with the constitution. Jordon v Gilligan, 500 F 2d 701 705(6th Cir. 1974).

The Court of Appeals affirmed the dismissal

of cases involving various persons by Judge Wiseman without supported facts.

Even though district Court found constitutional question frivolous, it is required practice to give the United States Attorney General notice and leave it to him to decide whether to intervene. Wallach v Lieberman, C.A.N.Y. 1966 266 F 2d 254.

2. The Court of Appeals affirms District Judge's abuse of discretion in enjoining Petitioner filing cases in the United States District Court when she appeals order for second time.

The Court of Appeals affirms the order enjoining Petitioner on November 13, 1985, in appeal to Jim Hamilton No. 85-6134 (D.C. 1:85-0116) supported by federal law in 1981, 1982 and 1983, in prejudice for various persons of Columbia Court, second complaint under diversity after petition 1:84-0082.

The Court disregards Notice of Appeal to entire case including order of enjoin on November 13, 1985 No. 85-6134, in dismissal in docket control and Petition to Rehear En Banc on October 23, 1986, and avoids issue of enjoin " the Court enjoined the plaintiff from filing ,... any future actions arising from state litigation. The plaintiff filed this appeal from that portion of underlying action."

Petitioner appealed enjoin again in this case No. 86-5536, Judge Wiseman's order of May 2, 1986, closing cases and enjoin on May 7, 1986.

The order of May 2, 1986, No. 86-5536, closing cases and enjoining Petitioner was included with letters to John P. Hehman, Clerk of the Court of Appeals on April 30 in answer to Petitioner's writ of mandamus'. In the letter answering Writ of Mandamus to file complaint and schedule jury trial in William Boston Boston Bates & Holt No. 86 5462. Judge explains order of November 13, 1985, entered because of previous filings of Mrs Polyak against various ^{persons in} ~~members of~~ this Court." In letter answering Writ of Mandamus No. 86-5460, Thomas Stack Henry Henry & Stack, Judge Wiseman refuses to correct error in filing Notice of Appeal No. 86-5199, and does not answer motion to schedule jury trial No. 1:85-0025. This case has been pending since December 3, 1985. Motions for jury trial disregarded.

It appears that Court of Appeals sanctions Judge Wiseman's abuse of discretion from dismissal of right to sue November 13, 1985, in 86-6134, by disregarding appeal except underlying action, but in Judge No. 86-5536, Order of May 2, Court disregards stated appeal to enjoin and uses "Judge to whom cases are reassigned should be provided with all previous filings ... the plaintiff appeals

from that order. Petitioner is not concerned that Judge Wiseman rescued himself from her cases, she appealed CLOSING OF CASES Nos. 1:84-0082, Frank Hulen and Wilma Lesnansky v Earlene Polyak; 1:84-0083, Earlene Polyak v Frank Hulen and Wilma Lesnansky; 1:85-0116, Earlene Polyak v Jim Hamilton et al.; 1:85-0120, Buford Evans & Sons v Earlene Polyak; 3:85X-108 William Boston Boston Bates & Holt; 1:85-0125, Earlene Polyak v Thomas Stack Henry Henry & Stack, and ENJOINING her for the second time from filing cases in the United States District Court denying right to sue 1981, right to inherit and hold 1982 and deprivation of state and constitutional rights and laws under the color of usage 1983, in prejudice to various persons in Columbia Court."...as violating the equal protection clause of the Fourteenth Amendment, because discriminating between cooperatives and complainants, as taking property without due process of law, and as impairing obligations of contracts," Mayo v Lakeland Highlands Co., 309 US 310(1936). Petitioner believes this case shows correlation in denial of right to sue for her large investment is irreparable damage and loss of right to never be regained to property.

3. The Court of Appeals affirms dismissal of complaints by District Court by misinterpreting that all cases seek review of Tennessee judgment.

The Court of Appeals affirms dismissal of all cases by District Judge in docket control by accepting misinterpretation that all seeking review of Tennessee state trial judge judgment ordering partition of farmland, when only No. 84-6090(D. C. 1:84-0082), Frank Hulen and Wilma Lesnansky v Earlene Polyak sought review pursuant to U.S.C. 28 1443(1)(2). This case involves settlement by agreement between Frank Hulen age 75, Earlene Ployak age 65, and Wilma Lesnansky age 62 in 1976.

Petitioner filed complaint under diversity of citizenship for right and kind in severalty in the United States District Court No. 85-5032/5101/5147 (D.C. 1:83-0083), on October 18, 1985, but Judge Wiseman dismissed without hearing, and awarded William Boston's son Richard Boston \$1,112.00 in costs and attorney fees(App. A p. 48 49). These cases were consolidated over Petitioner's objection in Court of Appeals and award of cost and fees affirmed on res judicata in docket control.

Case No. 1:84-0082, is unappealable judgment (App. A²p.19). Therefore No. 1:84-0083, could not

qualify and the dismissal by Judge Wiseman of this case should be rendered null and void pursuant to prior decisions of the Supreme Court.

Supreme Court has stated ia as "familiar law" that only final judgment is res judicata. G & Merriman Co. v Saafeld, 1916 241 US 22

4. The Court of Appeals affirms dismissal of by District Judge and abuse of discretion in denying pro se litigant federal and constitutional rights and laws.

The Court of Appeals affirms dismissal of cases by the District Judge in which pro se litigant is denied right to sue 1981, right of inheritance and hold property, 1982, and denial of due process and deprivation of civil and constitutional rights by Judge Hamilton 1983.

The District Judge enjoined pro se litigant from filing complaints in the District Court without giving date to defend herself, time or place, and threatens contempt of Court without hearing. The Honorable Thomas A. Higgins resumed Judge Wiseman's cases and stated that Petitioner was pronounced guilty by Judge Wiseman. Petitioner does not have right to sue for irreparable damage and the loss of a right to never be regained to her property in District Court.

Petitioner has been denied right to appeal by Judge Hamilton in disregard of appeal as a right in the state of Tennessee on November 7, 1985, by denial to forward records to Court of Appeals. Since amendment of Rule 5(a)TRAP, which deletes requirement that notice of appeal be filed Court of Appeals, Petitioner does not have access to appeal for the sale of her land without just compensation, or right to sue in the District Court for large investment 1982 and 1982. She believes that she is being denied due process in deprivation of civil and constitutional rights and laws.

The Supreme Court has... recognized that due process requirements are implicated whenever the enforcement power of government is employment power of governmentid employed to deprive and individual of an interest deprived from common-law in peaceful possession, Lindsey v Norbert, 405 US 56(1972) or use, Mulland v Hanover Bank and Trust Co., of real or personal property... whether such property if being taken to meet the need of government or private individual, Edwing v Mytinger & Casselberry, 339 US 59 (1950).

5. New evidence of intervening circumstances may render the affirming of the Court of Appeals of dismissals by District Court Null and VOID and merit New Trials.

Petitioner has learned from local newspaper "Advocate" in Lawrenceburg, Tennessee that Judge Hamilton has had operation for the removal of

from the front skull area of his head. She submits this information with compassion, but questions the effect of this developing health problem may have had on Judge Hamilton's abuse of discretion during the handling of cases involving her property.

The Court of Appeals affirms the dismissal of Cases No. 84-6090(1:84-0082) and 85-5032/5101/5147 (1:84-0083) by Judge Wiseman with Policy considerations in res judicata."... real estate and probate are peculiarly within the knowledge and expertise of local state courts, Policy considerations, therefore likewise support res judicata in this case (App. A²p.38). It appears that the District Judge or the Court of Appeals took into consideration that 1:84-0083, was filed in the United States District Court under diversity of citizenship and right to property supported by Tennessee Statute 29-27-117 , and

The Court may... in accordance with the wish of one... order an allotment of share ...in kind and severalty, and direct the sale of the other portion... Vandenburg v Molder, 4 Tenn. Civ. App. (Higgins) 111(1913). And, "Parole partition of land followed by possession is legal and binding" Martin v Taylor 521 S.W. 2d 582(Tenn. 1975)

CONCLUSION

Petitioner prays that a writ of certiorari issue from this Court to review order of the United States Court of Appeals and District Court in this appeal. She prays that she will be awarded damages for irreparable damage in loss of forty acres of property, and the loss of a right to never be regained to her retirement home, and in the alternative, she prays for New Trials.

On the 1st April, 1987.

Respectfully presented,

Earlene Polyak
Earlene Polyak

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(313) 676-3364

Certificate of Service

I certify that a true and exact copy of this pleading has been mailed, First Class, to the Honorable Thomas A Wiseman Jr., United States District Court, Nashville, Tennessee 37203, and to Solicitor General, Department of Justice, Washington D.C. 20530, and to all parties of interest in this cause. The Attorney General of Tennessee has already been notified of denial of due process and deprivation of civil and constitutional rights 28.U.S.C. 2403.

Earlene Polyak

I certify that the above is true to the best of my knowledge and belief.

STATE OF FLORIDA
COUNTY OF PALM BEACH

NOTARY PUBLIC

My commission expires: _____

AFFIDAVIT

Earlene Polyak deposes and says:

That she sincerely believes that adequate relief cannot be had in any other form or from any Court other than the Supreme Court of the United States. She submitted complaints to United States District Court in Nashville in an attempt to avoid local influence and prejudice, but these complaints were filed in the District Court in Columbia, Tennessee.

That she has been denied appeal in the state court and the District Judge has denied and dismissed complaint without hearing, and the Court of Appeals affirms District Court. District Judge has enjoined her from filing further complaints involving her property in Tennessee.

That she does not have any knowledge or expertise in the legal profession, and has been unable to attain representation, and is obligated to defend her constitutional rights, and laws pro se.

State of Michigan
County of Wayne

Notary Public

My commission expires: _____



APPENDIX A¹

In the United States Court of Appeals for the Sixth Circuit No. 86-5536.

Earlene Polyak v The Honorable Thomas Wiseman's

Or of May 2, 1986, Closing Cases No. 1:84-0082; 1:84-0083; 1:85-0116; 1:85-0120; 1:85-0125, and

3:85X-108, And Enjoining Appellant from Filing Further Cases in the United States District Court.

Notice of Appeal filed on May 7, 1986.

Dismissed in docket control on November 24, 1986.

Petition to Rehear En Banc denied January 7, 1987.

Before: Guy, Circuit Judge; Edwards, Senior Circuit Judge and Edgar, District Judge for the Eastern District of Tennessee, sitting by designation.

Certified Record was never sent to United States Court of Appeals. Petitioner found enteries of May 2, 1986 Order under United District Court Cases No. 1:85-0036, Earlene Polyak v William Boston, Boston Bates & Holt, and 1:85-0125, Earlene Ployak v Thomas Stack Henry Henry & Stack.

Writ of Mandamus submitted on April 24, 1986,

to schedule jury trial and answer motions in Thomas Stack, Henry Henry & Stack No. 86-5460.

Answer in Letter to John P. Hehman on April 30, 1986.

Writ of Mandamus submitted to file second complaint Earlene Polyak v William Boston, Boston Bates & Holt and schedule Jury Trial. Complaint was filed by the Honorable Thomas A. Higgins, No. 1:86-0036, but closed on August 1, 1986, and Petition to Rehear closing denied on August 17, 1986.

Although this appeal was to final order closing the above cases, Judge Wiseman styled form to the United States Court of Appeals to be against various persons complaints filed against in the division in which he presides in the United States District Court in Columbia, Tennessee, which is located in the same building as the State Court. Petitioner believes that these various persons as explained in letter to Mr John P. Hehman on April 30, 1986, in answer to writs of mandamus, handle both State and Federal cases in this Courthouse in Columbia, Tennessee.

Petitioner appealed the closing of cases and enjoin for second time, and she was never allowed show cause, or given date and time before 5/12/86.

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UNITED STATES DISTRICT COURT
Middle District of Tennessee
800 United States Courthouse
Nashville, Tennessee 37203

Office of the Clerk

615-251-7178

DATE: MAY 02 1986

RE: 1:84-0082; 1:84-0083;
1:85-0116; 1:85-0120; 1:85-
0125 and 3:85X-108

JUDGE WISEMAN

ENCLOSED IS A COPY OF THE FOLLOWING:
ORDER(S)

signed by the Judge on MAY 02 1986 and entered on
the docket by the Clerk on MAY 02 1986 in the
above styled civil action.

CLERK U. S. DISTRICT COURT

by: SHARI TIPTON

Enclosure

xc: John Hehman, Sixth Circuit Court of Appeals
Earlene Polyak
William Boston
Larry Brandon
Joe W. Henry Jr.
Thomas Stack
Charles Holt
Robert E. Boston

an equal opportunity employer

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
MAY 2 1986

IN RE:
EARLENE POLYAK

ORDER

I hereby rescue myself from all matters involving Mrs. Earlene Polyak. These matters are to be returned to the clerk for reassignment. The judge to whom these matters are assigned should be furnished with all previous filings and closed cases involving Mrs. Polyak including order of the undersigned enjoining her from filing further cases for the purpose of consideration of whether a show cause order should issue to her to show cause why she should not be held in contempt of such order.

Signed Thomas A. Wiseman Jr.

This order was appealed on May 7, 1986, and after waiting for a briefing schedule, which did not arrive after motions and telephone calls a brief was filed by Petitioner. The Honorable Thomas A. Higgins, District court refused filing copy of brief and it was returned.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

April 30, 1996

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re. Case No. 86-5462 Mrs Polyak
Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a complaint for Mrs. Polyak against William L. Boston. I have not previously acted upon this complaint because I was considering the issuance of a show cause order upon Mrs Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs Polyak was enjoined from filing any further suits in this Court arising out of the partition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs Polyak against various persons in this Court, all stating essentially the same facts, and arising out of state court proceedings which had been fully litigated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitions for

writ of mandamus received today. She has taken an inordinate amount of this Court's time to the detriment of other litigants and should be severely sanctioned therefor.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,

Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases, and cases are handled by William Boston, Boston Bates & Holt, and Thomas Stack Henry Henry & Stack (Buford Evans was retained by these lawyers). The petitions for Writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.

No. 86-5536
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED NOV 24 1986

NOT RECOMMENDED FOR FULL
TEXT PUBLICATION

EARLENE POLYAK
Plaintiff-Appellant

v
FRA K HULEN and WILMA LESNANSKY;
JIN HAMILTON and the CIRCUIT COURT
OF LAWRENCE COUNTY: BUFORD EVANS &
SONS; THOMAS STACK HENRY HENRY & STACK;
WILLIAM BOSTON, BOSTON BATES & HOLT,

Defendant-Appellees

BEFORE: GUY, Circuit Judge; EDWARDS, Senior Circuit
Judge and EDGAR, District Judge.

The plaintiff appeals an order in which Chief
District Judge Thomas A. Wiseman of the Middle
District of Tennessee rescued himself from all matters
involving the plaintiff. On appeal, the plaintiff
moved for alteration of the style given the present
appeal. The Clerk denied that motion. The plaintiff
now seeks reconsideration of that denial. The latter
motion has been referred to this panel pursuant to
Rule 9(a), Rules of the Sixth Circuit. Meanwhile,
the plaintiff has filed appellate brief.

The plaintiff has filed several actions in the
district court seeking review of a Tennessee state
court judgment ordering the partition of farmland
owned jointly by plaintiff and two siblings. After
reviewing some of these actions and finding them

to be frivolous and harassing, Judge Wiseman entered an order prohibiting the plaintiff from filing future actions relating to the partition sale without prior approval of the court. When the Plaintiff nonetheless continued to submit complaints, Judge Wiseman entered an order May 2, 1986, sua sponte, rescuing himself from all matters involving the plaintiff. He also ordered the judge to whom the cases were reassigned should be provided with all previous filings and orders, including the injunctive order, for a determination of whether plaintiff should be held in contempt. The plaintiff filed a notice of appeal from that order.

Even assuming this Court has appellate jurisdiction to review the rescual order, see Kelly v Metropolitan County Board of Education, 479 F 2d 810(6th Cir. 1973)(per curiam order), we conclude Judge Wiseman did not abuse his discretion in rescusing himself from future matters involving the plaintiff. Given the simple nature of the matters to be reviewed, the plaintiff has no right to have her cases heard by a particular judge, See Hampton v City of Chicago, 643 F 2d 478 479(7th Cir. 1981))per curiam). The notice of appeal gives this

- 3 -

Court no jurisdiction to review the November 13, 1985, order containing the injunctive prohibition or the possibility of future contempt orders arising therefrom.

Upon examination of the record and plaintiff's brief, this panel agrees unanimously that oral argument is not needed in this appeal. Rule 34(a), Federal Rules of Appellate Procedure.

We also find that the court clerk properly denied plaintiff's motion to have the case name restylized to "In Re: Judge Wiseman's Order of May 2, 1986." Under Federal Rules of Appellate Procedure 12(a), this court is obligated to docket appeal under title given to the action in the district court. Plaintiff's concern over res judicata effects of this ruling are misplaced. This ruling only concerns Judge Wiseman's sua sponte refusal; we do not consider merits of the underlying cases.

It is ORDERED that the motion for reconsideration be and it hereby is denied.

It is ORDERED further that this appeal be and it hereby is dismissed. Rule 9(d)(1) and (3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman

ISSUED AS MANDATE: 1/15/ 87

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
JAN 7 1987

EARLENE POLYAK

Plaintiff-Appellant

v

FRANK HULEN ET AL

O R D E R

Defendants-Appellees

BEFORE: GUY, Circuit Judge, EDWARDS, Senior
Circuit Judge and EDGAR United States
District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman, Clerk

Note: The initial order of November 24, 1986
was issued as mandate on January 15, 1987

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

EARLENE POLYAK

Petitioner.

FILED

JUN 13 1986

BEFORE: MARTIN, GUY AND BOGGS, Circuit Judges

The petitioner seeks a writ of mandamus directing the District Court for the Middle District of Tennessee, Columbia Division, to "correct" the filing date of a notice of appeal filed therein and to rule on the motions pending in the underlying action.

Upon consideration, this Court concludes the petitioner has not shown a clear and indisputable right to extraordinary relief sought. See Kerr v United States District Court, 426 U.S. 394(1976); Califano v Moynahan, 596 F. 2d 1320(6th Cir. 1979). It is also noted this Court has resolved the notice of appeal issue in the appeal resulting from Earlene Polyak v Thomas Stack, et al., Case No. 5199.

It is ORDERED that the petition for a writ of mandamus be and it hereby denied.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman
Clerk

No. 86-5460
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

EARLENE POLYAK
Petitioner.

FILED
JUL 23 1986

BEFORE: MARTIN, GUY and BOGGS, Circuit Judges

On June 13, 1986, this Court entered an order denying the petitioner's petition for writ of mandamus on grounds the petitioner had not shown a clear and indisputable right to the extraordinary relief sought. The petitioner now seeks rehearing of that order.

Upon review of the original petition and the present motion, we find no issues not already fully considered and found to be without merit. Therefore,

It is ORDERED that the motion for rehearing be and it hereby denied.

ENTERED BY ORDER OF THE COURT
Signed John P. Hehman
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

JUN 13 1986

EARLENE POLYAK

Petitioner

O R D E R

BEFORE: MARTIN, GUY and BOGS, Circuit Judges.

The Petitioner seeks a writ of mandamus directing the District Court, Columbia, Tennessee, to file a pro se civil complaint tendered to it by the petitioner.

As the result of several prior actions filed by the petitioner in which she sought review of Tennessee state court litigation, the district court entered an order on November 13, 1985, enjoining the petitioner from filing any further actions arising out of the same litigation. The petitioner did not appeal the entry of that order and its validity was not challenged in this Court.

Sometime in late February or early March, 1986 the petitioner submitted to the district court a complaint against counsel who represented the opposing parties in the state court litigation. The district court apparently took the complaint under advisement. As a result, it has yet to be filed by

the district court or placed upon its docket. In the present petition, the petition seeks an order directing the district court to file the complaint and set action for trial. She asserts the district court's failure to file the complaint denies access to the courts and to a jury trial.

In response, District Judge Thomas A Wiseman Jr., explained his decision to enter the injunctive order. He also informed the Court he has since rescued himself from all pending matters involving the petitioner and has retruned them to the district clerk for reassignment. He also directed the clerk to forward to the newly-assigned judge all prior filings and actions of the petitioner for consideration of the question of whether the present complaint violates the November 13, 1985 order.

A writ of mandamus is an extreme remedy to be used only in extraordinary and exceptional circumstances where the right to remedy is clear and indisputable. *Kerr v United States District Court*, 426 U.S. 394, 402-03(1976); *EEOC v K-Mart Corp.*, 694 F. 2d 1055, 1061(6th Cir. 1982). It cannot be used as a substitute for appeal or if other

remedies are available. Kerr v United States District Court, supra; City of Cleveland v Krumpansky, 619 F 2d 572, 575 (6th Cir.), cert. denied, 449 US 834 (1980).

The district court has not yet decided whether the present complaint violates the strictures of November 13, 1985, injunctive order. If the court refuses to file the complaint on grounds it does not violate that order-- a decision that should be renendered in a written order-- the petitioner may at that time take an appeal to this Court. Because the petitioner may gain review under these circumstances, mandamus would be inappropriate at this time.

It is therefore ORDERED that the present petition be and it herby denied.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:

JUL 23 1986

EARLENE POLYAK

Petitioner

O R D E R

BEFORE: MARTIN, GUY and BOGGS, Circuit Judges

On June 13, 1986, this Court denied the petitioner's petition for a writ of mandamus whereby the petitioner sought an order directing the district court to file a civil action submitted by the petitioner. The petitioner now seeks a rehearing of that order.

We have reviewed our prior order in light of the present petition. We conclude the petitioner raises no issues or claims not previously considered by the Court and found to be without merit. The fact the petitioner asserts she appealed the November 13, 1985, order of the district court enjoining the petitioner's filing of additional civil actions without approval of the district court reinforces our prior conclusion that mandamus relief is not available in this case.

It is ORDERED that the petition for rehearing be and it hereby denied.

ENTERED BY ORDER OF THE COURT
Signed John P. Henman

APPENDIX 1 (f)(h)

APPENDIX A

In the Chancery Court of Lawrence County,
Lawrenceburg, Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v.
Earlene Polyak, Defendant. Frank Hulen is 74 years
Earlene Polyak 64, and Wilma Lesnansky 62, years
of age.

Complaint and restraining order against
finishing seven year restoration of forty-five(45)
year old for retirement home to move to Tennessee
was served on Appellant on April 19, 1983.

Complaint was served on Appellant on property
near Lawrenceburg, while she is a resident of
Michigan, which renders complaint invalid by
Tennessee law. Chancery Court Case No. 1974.

Hearing held in Columbia, and in Maury County,
when complaint entered in Lawrence County, and
against Tennessee law that hearing be held in
county complaint entered on July 29, 1983.

Presiding: The Honorable Jim Hamilton. Judge
Hamilton held hearing while jury was out on another
trial, and issued verbal order to sell within two
hours when attorney for the defense started to
give summary. Judge Hamilton allowed memorandum brief.

STATEMENT OF THE CASE

Within one week after Mrs. Rena Hulen's death Plaintiff's initiated settlement by agreement of forty (40) acres with Frank Hulen adding back strip of acreage to his farm, Wilma Lesnansky getting acreage to the east of the house, as her son wanted to build home, and Appellant was to get forty-six (46) year old house with roof falling in, and acreage in front of house, about six (6) to ten (10) acres. As a result of this agreement in January, 1976, Appellant and her husband Alex Polyak traveled to the farm at least twice each year to prepare old house for a retirement home. This restoration was especially difficult for Mr. Polyak as he is a World War II veteran with an artificial limb. The restoration included, but not excluded to, new roof costing over \$1200.00, painting wood and restoring cement blocks, electric repairs, telephone installation, termite control insurance, and repairs too numerous to mention. A trailer was pulled from Michigan to haul away large underbrush and rubbish. Plaintiff's were present, but did not help, or invest any money.

In 1982, Frank Hulen stated that he wanted the property sold so his kids could buy it, and he and Wilma Lesnansky conspired to sell property without offering any compensation for Appellant's investment. They retained William Boston, Boston, Bates & Holt, who had represented the family since 1976, and this law firm divided loyalties and sued for sale. Property is usually sold at Public Auction in Court ordered sales.

Appellant does not have any knowledge of law or expertise in the legal profession, but she relieved the first attorney, Mr. Lee England after he asked whether she wanted a private or public sale. Mr. England had promised to defend Appellant investment and the settlement by agreement in 1976.

Mr. Thomas Stack, Henry Henry & Stack was retained after he promised to defend settlement by agreement and investment in retirement home. He cashed \$1500.00 check enclosed with letter stating "it is understood that if we are not successful in Lawrenceburg we will appeal to a higher Court. Mr. Stack promised that his work would merit appeal. He stated he needed \$1500.00 to go against friends.

SUMMARY

Appellant suffers from open-heart surgery and resulting complications which results in sensitivity to temperatures, and she became ill during July 1983, during a nationwide warning for heart patients to stay out of the heat wave. She asked Mr. Stack for hearing to be rescheduled due to 102 degree heat wave in Tennessee, but he stated that Mr. William Boston absolutely refused. Appellant was obligated to travel in heat wave to try to defend her right to her property. After exposure to this intense heat her condition became more severe and she required Oxygen, but Mr. Stack again refused to reschedule hearing on July 29, 1983. She objected twice sister not at trial

After Judge Hamilton ordered the property sold, Mr. Stack asked to submit a memorandum brief and it was allowed. Mr. Stack retained the services of Mr. Buford Evans, Real Estate Auctioneer to survey Appellant's property without her permission or knowledge, and she believes that the map is an invalid representation of her property. The Memorandum Brief is as follows:

IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

Plaintiffs

VS

No. 1974

EARLENE POLYAK

MEMORANDUM BRIEF

On July 29, 1983, a hearing was held in the above styled cause before the Honorable Jim T. Hamilton, by consent of all parties and their counsel, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) whether the subjected property can be partitioned in kind or, alternatively, whether it is manifestly to the advantage of the parties that it be sold for partition or so situated that it is not feasible or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance upon which Defendant has made substantial improvements on the house situated on subject property.

This action is governed partly by the provision of Statute at TCA 29-27-201, et seq. It is also governed by a substantial body of case law,

pertinent portions of which will be cited herein.

PARTITION IN KIND FAVORED OVER SALE FOR PARTITION

The party insisting on a sale must show clearly by the facts that necessity for such sale and nothin short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common. Reeves v Reeves, 58 Tenn 669, Vandenburg v Molder, 4 Tenn. Civ. App.(4Higgins)III.

Parition in kind at common law was a matter of absolute right. Sale may not be ordered without good cause being shown. The applicant for sale must show the existance of such a state of facts for sale as, under the statute, will be sufficient to rebut the presumption of law that each of the parties is entitled to an actual partition. The onus is always on he who seeks sale.

Bevins v George, 255 S.W. 2d 409

BURDEN OF PROOF

The burden of proof where a party petitions for sale for partition clearly rests heavily on that party.

The mere opinion of a witness without facts sustaining it that the property can not be

partitioned and must be sold is insufficient. A sale for partition based thereon will be held "utterly void".

Davidson v Bowden, 37 Tenn. 129
Ross v Ramsey, 40 Tenn. 15

Again, nothing short of the clearest and most satisfactory proof could justify the Court in ordering sale against the protest of one(1) of the tenants in common.

Reeves v Reeves, 58 Tenn. 669

Vandenburg v Molder supra:

Glen v Gresham, 602 S.W. 2d 256

PARTITION IN KIND IS A SEPARATION BETWEEN OWNERS

It is not a conveyance and, therefore, not governed by the statute of frauds. An agreement for partition between co-tenants may be proved by parole evidence.

Fisher v Loague, 3 Tenn. Cas. (Shannon) 123
Meachum v Meachum, 19 S.W. 757 91 Tenn. 532
McBroom v Whitefield, 108 Tenn. 422
McCaulty v Peoples, 4 Tenn. App. 448

Where on tenant in common, at his own expense puts improvements on common property, and afterwards partition in kind is made, such improvements should be allotted to the share of the party making them, and without any charge for their value.

Polk v Gunther, 107, Tenn. 16
Broyles v Waddell, 58 Tenn 32

The cost of improvements made can be allowed to such a co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the property.

Wilburn v Kingsly, 3 Tenn. App. 88

If exact partition can not be made without material injury to the parties, or some one of them (the Commissioners), may make partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares, and report the facts.

T.C.A. 29-27-549

Hardin vs. Cogwell, 52 Tenn. 549

Burdett vs. Norwood, Tenn. 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case does not act merely in a ministril capacity, but founds itself on general principles of equity according to its own notion of equal justice and equity between rights of the parties interested.

Sproles vs. Gray, 296 S.W. 2d 839

PROOF IN CASE

No summary will be made of the proof adducted at trial. The Court has its own notes and rec-

olection of what was established by both sides at this hearing. Defendant will rely upon these facts and the application of the above-cited law thereto.

Respectfully submitted,

Signed Thomas Stack
Attorney for Defendant
Earline Polyak

After verbally ordering property sold on July 29, 1983, Judge Hamilton signed formal order prepared by Boston Bates & Holt, signed by William Boston and Thomas Stack on October 19, 1983. Appellant objected to this order being signed to Thomas Stack and Judge Hamilton on this date by telephone, which did not award her any compensation for restoration and maintenance of house since 1976.

The taxpayer's copy of 1983, Property Tax Receipt No. 500-83-07353, Mrs Rena Ann Hulen, Summertown Tennessee 38483, shows 100~~0~~ improved value of \$8100.00, which is over one-half value of land and all added by Defendant and her husband.

Mr. Buford Evans evaluated property with three parts of equal value with total land value of \$33,690.00 and total dwelling value \$6,330.00, which included Appellant's improvements. Defendant demanded a New Trial and Mr. Stack submitted motions:

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiffs

VS

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Court in Lawrence County, Tennessee, While holding Chancery Court for Lawrence County Tennessee, upon complaint hereto filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the court found in memo dated August 11, 1983, the following findings:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different

types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Evaln Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of Oct. 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiffs

vs

NO. 1974

EARLENE POLYAK
Defendant

MOTION FOR NEW TRIAL
OR FOR ALTERATION AND
AMENDMENT OF JUDGMENT

Now comes Defendant, Earlene Polyak, pursuant ule 59, T.R.C.P., and respectfully moves that this Honorable Court grant a new trial of these proceedings or in the alternative that the order previously entered herein be modified in certain respects as set out below:

1. The motion for new trial is predicated on (a) the failure of plaintiff to meet their burden of proof by showing with clear and satisfactory proof that the subject premises are not suseptible of division or partition in kind: (b) the fact that a preponderence of the proof particularly the testimony of Buford Evans, suggested that the premises can be contrary to said wweight of evidence.

2. The alternative motion for alteration and amendment of the order previously entered is

predicated on the failure of the Court to award to Defendant from the proceeds of the partition sale ordered the sum of \$1,600.00 that being the amount spent by Defendant on refurbishing the house as shown by her uncontrived testimony at the trial.

HENRY HENRY & STACK

Signed by Thomas Stack

Appellant confronted Mr. Stack with the fact that she had been subjected to an unfair and unjust trial on August 1, 1983, within three days after the hearing in his office in Pulaski, Tennessee.

Appellant went to Tennessee on August 22, 1983 to confront him again about failure to answer her telephone calls about case and demanded a New Trial again, which supported her many demands both in writing and by telephone. Mr. Stack was not in his office on August 22, but Joe Henry took her complaints. She complained again to Mr. Stack on August 23, 1983, and he promised to answer calls.

Appellant had suspected for some time that Mr. Stack was not representing her best interest, and objected to order as she many more bills and the

amount of money he asked for in the motion for alteration and amendment of judgment would hardly cover the new roof. He stated that he did not believe that Judge Hamilton would award Appellant any money. She learned on November 7, that order to sell property had been entered on October 19, 1983, and only a few days left to appeal. Appellant suspected that the map would be used to sell the property as it is the custom to divide property then sell for the higher price at Public Auction. When Mr. Stack ignored additional bills for the second time, she relieved him of his services and assumed her case on December 19, 1983.

Appellant believes that she first raised the constitutional question that she was being deprived of her property interest without due process and just compensation when she confronted Mr. Stack within three days after the hearing with an unfair and unjust hearing and demanded a New Trial.

Appellant confronted Judge Hamilton with an unjust and unfair hearing and asked for a new trial based on (1) she was taken across county lines for hearing in Maury County, when complaint entered in Lawrence County and against Tennessee law; (2)

Plaintiff Wilma Lesnansky did not come to hearing or testify and valuable evidence about the settlement by agreement; was withheld in her testimony; (3) Alex Polyak did not testify. He was present when division lines were being drawn; (4) Appellant was obligated to attend hearing while desperately ill due to heat wave, which a nationwide warning to heart patients was in effect; (5) Appellant's case was not given adequate time and consideration due to being held while the jury was out on another trial.

Appellant predicated her argument for amendment or alteration of previous judgment on the Court's failure to award her any monies for the restoration and maintenance of the property for seven (7) years out of the proceeds before any distribution of the money from the sale of the property. Judge Hamilton verbally denied motions and instructed William Boston to prepare the judgment and instructed Appellant to get her appeal in within ninety (90) days. Judge Hamilton stated that the Court would prepare a release from the defense of Appellant, but she found and order prepared without her knowledge in his return materials. This hearing resulted in judgment and order:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds no merit, and said motion is here and now overruled in its entirety. Judgment is signed by Charles Holt, Boston, Bates & Holt and Judge Hamilton and entered December 20, 1983.

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or amendment of judgment of the order previously filed herein by the Defendant, Earlene Polyak by and through her counsel of record, Henry Henry & Stack, and upon the oral motion of said Earlene Polyak to be allowed to represent pro se, and that Henry Henry & Stack be relieved as counsel and further aforementioned Motion not be heard in this Court IT IS THEREFORE ORDERED are relieved as counsel in this cause and that aforementioned Motion for a New Trial etc, be and hereby dismissed. This order was signed by Thomas Stack, William Boston and Judge Hamilton and entered January 10, 1984.

The Notice of Appeal was mailed to the Chancery Court of Lawrence County on December 30, 1983, and a copy was mailed the the Court of Appeals in Nashville, Tennessee.

On July 26, 1984, Mr. Evans filed a complaint against Appellant in the Circuit Court of Lawrence County, Case No. 10647, Buford Evans v. Earlene Polyak

After the Trial Clerk filed the technical record seventeen days after the notice of appeal case was suddenly dismissed, but Appellant was allowed to submit brief on technicalities after petition to rehear, was allowed by the Court of Appeals.

It was decided that she should have appealed the order entered by Mr. Stack on January 10, 1984, without her knowledge, instead of the judgment entered by William Boston on December 20, 1983. This unappealable was entered after Judge Hamilton instructed Appellant to appeal it on December 19, 1983.

Appellant submitted timely brief on February 23, 1984, and Statement of Evidence on March 2, 1984, but appeal was never heard, and case was dismissed on April 26, 1984. The pertinent part of the decision is as follows:

And it appearing from the record that appellant's motion to alter and amend was heard on December 19, 1983, that on January 3, 1984 appellant filed a notice of appeal "from the from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter of amend was not entered until January 10, 1984.

... and it appearing that hte judgment from which appeal was sought is not a final judgment appealable as a right under TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sals or transfer

title.

IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial court by appeal prosecuted from final judgment.

On August 15, 1984, the TRAP amended Rule 5(a) deleting the requirement that a copy of the notice of appeal be filed with the clerk of the Court of Appeals. Appellant believes that this rule allows for discrimination as to who is allowed to appeal. Judge Hamilton denied Appellant's motion to forward records of Case No 10647, on December 7, 1985. She believes that pro se litigant is not allowed appeal as a right.

Judge Hamilton disregarded all of Appellant's motions, petitions and requests, in an attempt to correct the record, and defend herself in the Chancery and Circuit Court of Lawrence County.

Appellant believes that she had a valid argument as TRAP Rule 4(d) a notice of appeal filed before the entry of the judgment shall be treated as filed after such entry and on the day thereof, and (d) establishes the general principle that a right of appeal is not lost by filing the notice of appeal before judgment appealed.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE-ARGUMENT STATEMENT

EARLENE POLYAK Plaintiff	District Sixth	Judge Wiseman
v. FRANK HULEN AND WILMA LESNANSKY	Com. Filed 10/18/84	Docket no. 1:84-0083

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield Dr. Trenton, Mi.	(313)676-3364

APPELLEE

Defendant
ROBERT BOSTON 2100 One Commerce Place, Nashville,
Tenn. 37239
(615)244-6380

Check as many as apply		
A. Jurisdiction	District Court	Relief
	Disposition	

Federal Question	X Final	XDamages
X Diversity	Decision of District Court	Amount sought <u>\$60,000.00</u>
	X No Trial	

NATURE OF SUIT

X Civil Rights	X Real Property
----------------	-----------------

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CIVIL APPEAL PRE ARGUMENT STATEMENT

FRANK HULEN AND
WILMA LESNANSKY

District
Sixth

Judge
Wiseman

Counter-claim

EARLENE POLYAK
Defendant

Com. Filed Docket No.
10/1/84 1:84-0082

Name	Address	Telephone
EARLENE POLYAK	3179 Middlefield, Trenton, Mi.48183	(313)676-3364

Plaintiff

ROBERT BOSTON	2100 One Commerce Place Nashville, Tenn. 37239	(615)244-6380
---------------	---	---------------

Check as many as apply

A. Jurisdiction	District Court Disposition	Relief
-----------------	-------------------------------	--------

<input checked="" type="checkbox"/> Federal Question	<input checked="" type="checkbox"/> Final <i>Counter-claim</i> Decision of	<input checked="" type="checkbox"/> Damages amount sought
<input checked="" type="checkbox"/> Diversity	District Court	<u>\$60,000.00</u>

☒ No Trial

NATURE OF SUIT

☒ Civil Rights

☒ Real Property

Copied from costs and fees to District Court:

Set out below in the description of services
dates of services and time spent by me on behalf
of defendants in this matter:

<u>Date</u>	<u>Services</u>	<u>Hours Spent</u>
10/06/84	Conference with W. . Boston (father) re District Court representation and factual background on case and parties	1.50
10/18/84	Preparation of Motion and Memo. in support thereof and research for same; telephone conference with state court counsel (father)	1.70
10/09/84	Telephone call with W.E. Boston (father) and preparation of revisions in Memo. brief.	.20
10/10/84	Preparation of motion and corres- pondence of conveyance of same(father?) Conference with United States District Court Clerk's personnel re status of pending pleadings.	.20
10/19/84	Review of plaintiff's brief and preparation of response thereto defendants; telephone conference with counsel (father).	.50

<u>Date</u>	<u>Services</u>	<u>Hours Spent</u>
10/26/84	Preparation of reponses on District Court pleadings. <u>(Decision on case No. 1:84-0082, on</u> <u>October 26, 1984, these charged to</u> <u>1:84-0083. After denial by Court</u>	.60
10/29/84	Preparation of responses to Polyak's subsequent District court pleading. with <u>W. E Boston (father)</u> re status of pending matters.	.60
10/31/74	Research for res judicata effort of plaintiff's state court law- suit.	.40
11/01/84	Review of file preparation of motion to dismiss	.20
11/05/84	Preparation of status of Polyak pleadings motions telephone <u>conference with counsel (father).</u>	.20
11/08/84	Preparation of memo brief re response to Plaintiff's com- plaint in District Court	1.10
11/9/84	Review of Tennessee Court of Appeals Tennessee Supreme Court files, revision of memo. for defendants.	1.90

11/12/84 Preparation of motion and memo on . . .10
on behalf defendants

11/13/84 Review of Polyak's pleadings, letter .10
Lawrence County Clerk & Master

11/19/84 Preparation and certification records .10
(duplication)

11/21/84 Preparation of supp. memorandum .10

11/25/84 Telephone call W.E Boston(father) .10

12/05/84 Review memo. telephone conference .10
with W.E. Boston(father) 1.20

12/07/84 Preparation and revision and correction
in affidavit letter to W.E. Boston
(father) .80

total hours spent 12.60

Photo copies \$37.80
Long distance 66.96
\$104.76

Signed Robert Boston
Robert Boston

Note: Mr. Boston entered attorney costs and fees in the Court of Appeals without serving and allowing Appellant to object and all efforts to get a recall of mandate were disregarded by clerk.

Appellant believes she has been denied due process and these long distance calls were to his father William Boston who lives in Lawrenceburg, Tennessee.

The above costs and attorney fees were copied from Affidavit submitted to the United States District Court by Mr. Robert Boston.

APPENDIX A³

In the Circuit Court of Lawrence County,
Tennessee.

Buford Evans & Sons , Plaintiff v Earlene
Polyak, Defendant, Case No. 10647.

Hearing in General Secessions Court on October 1,
1984, appealed to Circuit Court on October 10, 1984.
Circuit Court Clerk refused to allow appeal until
Defendant went to County Court Clerk and brought
back a copy of the deed to additional forty (40)
acres of land. Jury trial scheduled for April
session of Court in 1985.

Trial set for December 26, 1984, by the
Honorable Jim Hamilton.

Presiding: Jim Hamilton

Motion for forty-five (45) day continuance
denied on December 26, 1984.

Motion for Judge Hamilton to disqualify him-
self denied on December 26, 1984.

Judgment entered on August 7, 1985.

Amended Judgment signed by Judge Hamilton on
August 22, 1985.

Judgment and Amended Judgment appealed to the
Court of Appeals of Tennessee, on August 29, 1985.

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE FLOYAK
Defendant

REQUEST FOR CONTINUANCE

Defendant Earlene Polyak, requests a forty-five day continuance to the above styled case on the jury docket for December 26, 1984, at 9:00 A.M. This request is necessary because of the extreme burden her appearance in Trial Court would place on her health at this time. Defendant's physician is preparing a letter which will be enclosed with this request. She also enclosed Affidavit as to the status of her health at this time.

Signed Earlene Polyak
Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Date: December 5, 1984

Defendant needed further medication upon arriving in Florida, and required treatment for bronchial condition and eyes. She kept calling the Court to find out if the Continuance had been granted, and finally was allowed to talk

to Judge Hamilton. He ordered her to court on December 26, 1984. Defendant submitted a Motion for Disqualification on December 20, 1984, with Affidavit. Motion follows:

IN THE CIRCUIT COURT
FOR
LAWRENCE COUNTY, TENNESSEE

BUFORD EVANS
Plaintiff

VS

Appeal No. 10647
General Sessions No. 7196

EARLENE POLYAK
Defendant

MOTION FOR DISQUALIFICATION

Defendant arlene Polyak, move that the Honorable Jim Hamilton disqualify himself from the above styled case and all cases in the Chancery and Circuit Court of Lawrence County involving the defendant, due to the unfavorable opinions formed without consideration of said defendant, and apparent dislike, which may result in injury to her health.

Defendant was informed by the Court Clerk that the Jury Trial which she requested to the above styled appeal would be held in April, 1985. She was informed that the Honorable Jim Hamilton scheduled this trial for December 26, 1984.

THE CIRCUIT COURT OF LAWRENCE COUNTY
LAWRENCEBURG, TENNESSEE
HON. JIM T. HAMILTON, PRESIDING

BUFORD EVANS

Plaintiff

VERSUS

EARLENE POLYAK

Defendant

JURY TRIAL
Reporter's Partial Transcript
December 26, 1984

APPEARANCES FOR COUNSEL

For Plaintiff

Larry Douglas Brandon
320 East Main Street
Mufreesboro, Tennessee
615-890-8517 37130
In Propria Persona

For Defendant

JAMES LEONARD HOBBY
Court and Deposition Reporter
365 Holly Grove Road
Lewisburg, Tennessee 37091
(615) 359-4455

Evans v Polyak pages 4, 5, 6,

Mrs. POLYAK: ... I have requested a continuance ..
My doctor, Dr. Delfan Santos ...

Her diagnosis is as follows: coronary artery
disease, unarable angina, lung atelectsis, which
affects her ability to perform even basis duties.

Patient is on several medications for her
consirion. Because of patients multiple health
problems and acute arthritis, we recommend the
patient to seek a warmer climate.

... When I was in Florida, Dr. Herman said, Mrs.

Polyak is in poor health with cardiac problems necessitating immediate medication.

I called several times to tell you that I have another doctor down there. I had another arthritic attack there. My eyes, I could not see.

I came here with -- my son and my husband brought me in the back seat of a car on pillows and I have been in a motel all day, and I took oxygen, last night to be here.

And I think this is harrassment to bring me here, today, in my state of health and against the Constitution, in which it says the eight ... that we should not be inflicted with cruel and unusual punishment, and I think it is unusual punishment for my health to be here today.

THE COURT: All right, since we have the jury here..

MRS. POLYAK: Your Honor, I have already listened to the jury in the hallway. I understand they are tired and they don't want to be here, because its Bristmas. I understand this jury has been coming in quite a while. I already feel their hostility toward being here.

THE COURT: Well,

MRS. POLYAK: and I want to put this on record.

THE COURT: Well, you've got it on record ...

I am going to overrule your motion asking me to disqualify myself. I'm going to overrule that motion

Evans v Polyak 35, 36, 37

Thomas Stack testifies against Defendant (former attorney.) Plaintiff believes Judge prejudiced

Q. Didn't I put my own notice of appeal in on November 14, 1984? You had not appealed case

MR. STACK: Your, Honor --

THE COURT: Mrs. Polyak I am going to interrupt you, here, and I'm going to make a statement to this Jury concerning that aspect, although it is irrelevant to this case. I don't know the exact dates but I will tell this jury that M. Stack appeared in my Court. He had filed a motion for a new trial .. He appeared in my Court on the day that he was to appear to argue motion, before me, seeking for me to chang my mind and grant a new trial.

Prior to that argument, Mrs. Polyak appeared there and asked me to allow her to relieve Mr. Stack from any further representation ...

I then allowed Mrs. Polyak to file her own motion, which was done in her own handwriting on a yellow piece of legal paper. I did over strenuous objection of counsel on the other side, who was Mr. Boston. I overruled his objections and allowed her to present that as her motion for a new trial. I allowed her, that day, over strenuous objections from Mr. Boston to argue that case and argue that motion on her own behalf.

Mr. Stack, I assume, was back in Pulaski, peacefully practicing law and I want you to understand that that is what he did in this case and I am not going to entertain any further questions concerning that Mrs. Polyak...

MRS. POLYAK: I have one question.

THE COURT: All right. Ask it.

Q. by MRS. POLYAK: Mr. Stack did you hear Mr. Boston object - - -

THE COURT: I'm not going to allow that. I'll say this and I put it in the record, Mr. Boston objected strenuously, that day ...

MR. STACK: Your Honor, if I may ... there was a long delay in the order actually being entered.

EVANS V POLYAK

ALEX POLYAK testifies. Defendant believes jury prejudiced again by Judge Hamilton when he yelled at her for about the fifth time. Page 39 40

THE COURT: Mrs. Polyak, I hate to interrupt you but I'm interested in his testimony concerning any knowledge he has of what the issues of the lawsuit we are here about today, is, and that is the contract with Mr. Evans (Defendant did not have a contract with Mr. Evans) that's what you need to ask about.

MRS. POLYAK: Your Honor, I would like to establish that this man is a well-respected man, He has come to Tennessee.

THE COURT: All right I'll take it --

MRS. POLYAK: He has worked in the woods --

THE COURT: Mrs. Polyak, you wait just a minute when I say something.

MRS. POLYAK: Yes sir.

THE COURT: I'll take judicial notice and I am sure he is a well-respected man... Now if he knows anything about that contract, that's what I want to hear.

Evans v Polyak pages 52 53

JUDGE HAMILTON: (part of jury instruction)

Ladies and gentleman, you have heard a lot in this case about a partition suit. Now I'm going to very briefly define for you, basically what a partition suit is.

A partition suit is a suit that is brought by one or more heirs to an estate. For instance if you have four children in an estate, and there is left to them in equal shares, a tract of land. If they are unable to agree upon an equal division of that land then one or more of them may file in court what is called a partition suit and ask that the land be sold and the proceeds of the sale divided equally among the heirs, and that is what a partition suit means.

One side says, "we can't divide it, equally any way except to sell it and divide the money, equally. The other side says, "No that's not true. We think we can divide the land up and give an equal portion of the land, so that is basically what a partition suit means

(The Judge reads from a red book defining the law on agency, which the Court reporter left out of the transcript).

.....

APPENDIX A⁴

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County No. 85-6134

Denied in Docket Control on August 15, 1987.

Petition to Rehear En Banc denied on October 23, 1986.

Notice of Appeal filed on March 14, 1986.

Presiding: ENGEL and GUY, Circuit Judges; and SUHRHEINRICH, District Judge.

This appeal was dismissed in docket control and the decision is not recommended for full text publication. on August 15, 1987.

The denial of Petition to Rehear En Banc appears to be a form order. on October 23, 1986.

Note:

All of the Petitioner's appeals have been dismissed in docket control without hearing or Oral Argument. Petitions for Rehearing En Banc have been dismissed or denied in what appears to be a form letter of denial in the Court of Appeals for the Sixth Circuit.

No. 85-6134

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED AUG 15 1986

EARLENE POLYAK

Plaintiff-Appellant

v

ORDER

Not recommended for full
text publication etc.

JIM T HAMILTON, INDIVIDUALLY
AND IN HIS JUDICIAL CAPACITY AS
CIRCUIT JUDGE, AND THE
CIRCUIT COURT OF LAWRENCE COUNTY

Before: Engel and Guy, Circuit Judges; and
Suhrheinrich, District Judge

The plaintiff appeals the order sua sponte dismissing her civil rights case against a state judge. The appeal was referred to this panel pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

The plaintiff filed this action under 42 U.S.C 1983 asserting the defendant judge violated her civil rights by his handling of litigation to which the plaintiff was a party. For relief, she sought damages and injunction prohibiting the enforcement of an order for a partition sale

entered by the defendant as a result of state litigation. In dismissing the action sua sponte, the district court held the defendant immune from damages under 1983 because of absolute judicial immunity. Stump v Sparkman, 435 U.S. 349(1978). It is also found the request for injunctive relief barred by the doctrine res judicata because of prior litigation in both the state courts and the district Court. The court concluded the case was "frivolous" malicious, and harassing(sic)" and that it had the inherent power to prevent abuse of its process and prevent injustice." In light of prior actions filed by the plaintiff, the court enjoined the plaintiff from filing, with out Court permission, any future actions arising from state litigation. The plaintiff filed this appeal from that portion of the order dismissing the underlying action.

For reasons stated by the district court, we find no error in the dismissal of the plaintiff's action. We observe that 1983 cannot be used to gaind review of an unfavorable state court decision properly rendered within its jurisdiction and expertise. See Johns v Supreme Court of Ohio, 753 F. 2d 524 527(6th cir), cert denied, __US __ 106 Sct.

88 L. Ed 2d 65(1985); Tonti Petropoulous, 656 F 2d 212 216(6th Cir. 1981). We also note that state courts per se are not "persons" susceptible to suit under 1983. Coopersmith v Supreme Court of Colorado, 465 F. 2d 993(10th Cir 1972).

It is therefore ORDERED that the district court's order of November 13, 1985, dismissing the plaintiff's action be and hereby affirmed. Rule 9(d)(2). Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed John P Hehman
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff/Appellant

FILED OCT 23 1986

John P. Hehman

v

ORDER

JIM T HAMILTON, INDIVIDUALLY AND IN
HIS JUDICIAL CAPACITY AS CIRCUIT JUDGE
AND THE CIRCUIT COURT OF LAWRENCE COUNTY

Defendants/Appellees

BEFORE ENGEL AND GUY, Circuit Judges and
SUHRHEINRICH United States
District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge requested a vote on the hearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman
John P. Hehman, Clerk

- 9 -
NO. 86-667

IN THE
SUPREME COURT OF THE UNITED STATES

EARLENE POLYAK
Petitioner

VS

JUSTICE HARRY BLACKMAN

BUFORD EVANS & SONS

APPLICATION FOR STAY FOR RECORDS
TO REVIEW CASES

Petitioner Earlene Polyak, pursuant to U.S.C. 2101(f) applies to this Honorable Court for a stay of the above styled case for record ordered from Gerald Wilson, Circuit Court of Lawrence County(Ex.1). She believes these records are necessary to the review of Notice of Appeal to this Court Case No 85-6134(D.C. No.1:85-0116) filed in the United States Court of Appeals on November 14, 1986, in Case No.85-6134 Jim T. Hamilton and the Circuit Court of Lawrence County (Ex. 2).

Case No. 1:85-0116, was filed in the United District Court on November 8, 1985, and Case No85-6134(D.C.!:85-0120) was joined under 28 USC 1441(c). These cases involve the trial conducted by the Honorable Jim Hamilton in Buford Evans v Earlene Polyak on December 26, 1984. Petitioner believes that Judge Hamilton prejudiced toward her and he denied Motion for a Continuance, and Motion to Disqualify himself from hearing. She believes that Judge Hamilton allowed former counsel Thomas Stack Henry Henry & Stack to testify and

present confidential information and further prejudiced jury. A transcript of the proceedings which is important to all of these cases arising out of No. 84-6090(D.C. 1:84-0082) Frank Hulen and Wilma Lesnansky v Earlene Polyak is available in the Circuit Court of Lawrence County.

Petitioner applies for a stay in the review of No. 86-667, for the records in the above case, and the briefs in Case No. 85-6134, in which the Notice of Appeal was filed on November 14, 1986.

On 2nd day of December 1986.

Earlene Polyak
4063 Hood Road
Lake Park, Florida
33418

I certify that a true copy of the pleading has been mailed to Mr. Larry Brandon, Box 5065 Uptown Station, Mufreesboro, Tennessee 37133

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

In the United States District Court, Middle District of Tennessee.

Earlene Polyak v Jim T. Hamilton and the Circuit Court of Lawrence County No. 1:85-0116.

Filed on November 8, 1985.

Dismissed without hearing, Oral Argument or Jury Trial within filing.

Presiding: The Honorable Thomas A. Wiseman

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NOV 13 1985
BY Sheri Tipton
Deputy Clerk

EARLENE POLYAK
vs

Civil Action No.1:85-0116
Judge Wiseman

JIM T. HAMILTON, Individually and
in his judicial capacity as
Circuit Judge, Jointly and
severally, and The
CIRCUIT COURT OF LAWRENCE COUNTY

MEMORANDUM

The Court has before it a civil action filed November 8, 1985 against" Jim T. Hamilton, Individually and in his judicial(sic) capacity as Circuit Judge, Jointly and severally, and the Circuit Court of Lawrence County." Plaintiff has asked for a Restraining Order to restrain the sale of property in Lawrence County which has been the subject of litigation by plaintiff before the defendant, Hamilton, in the Circuit Court of Lawrence County. Also requested a"Protective Order" from any "further acts of wrong doing(sic) intimidation or retaliation, during her travel and care of her property in Tennessee. And that she be allowed to present herself in Court when, and if her health and wheather(sic) permits."

She also seeks compensatory damages.

The Court has considered the application for extraordinary relief and finds the petition lacking in the first prerequisite for such relief, that is, a showing of probability of success on merits. Such applications are denied. This is the third attempt by this plaintiff to relitigate issues that have been fully adjudicated in state court. In Frank Hulen v Earlene Polyak, No. 1:84-0082 (M.D. Tn), plaintiff sought to remove to this Court from the Supreme Court (Chancery Court of Lawrence County), Tennessee, a partition decree by Judge Hamilton. That case was dismissed by this Court for untimely removal. Mrs Polyak then filed again in this Court in the case of Earlene Polyak v Frank Hulen et al., No. 1:84-0083 seeking to enjoin the sale of land. That case was dismissed on grounds of res judicata. Both of these cases have been appealed to the Sixth Circuit Court of Appeals.

The present action seeks to enjoin the sale by a personal action against state trial judge, alleging violation of civil rights.

This plaintiff is abusing the process of this

Court. The basis thrust of her complaint is to enjoin the sale of property by partition, a matter she has taken to the Supreme Court of Tennessee and lost(Supreme Court did not hear appeal, Em.added), and has twice tried to litigate in this Court unsuccessfully. The compensatory damage remedy she seeks against Judge Hamilton is barred by the doctrine of absolute immunity afforded judges for judicial actions clearly within their jurisdiction. Stump v Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 88 L.Ed 2d 331(1978); Pierson v Ray, 386 U.S. 547, 87 S Ct. 1213, 18 L Ed. 2d 288(1967). Although a state judges is not immune from actions for injunctive relief, Pullian v Allen, __ U.S. __, 104 S.Ct. 1970(1984), the injunctive relief sought has previously been fully litigated in State Court as well as here. This Court may take judicial notice of its own cases and actions therein.

This case is frivolous, malicious, and harassing(sic). This Court has inherent power to prevent abuse of its process and prevent injustice. This case is dismissed with prejudice. No process shall issue, but a copy of this memorandum and

Order will be mailed defendants. The plaintiff is enjoined from filing any further litigation in this Court regarding the sale of this property or the state litigation surrounding sale of such property without express permission of this Court.

Signed Thomas A Wiseman Jr.

THOMAS A WISEMAN ,JR.
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NOV 13 1985

By S. Tipton
Deputy Clerk

EARLENE POLYAK
vs

Civil Action No.1:85-0016
Judge Wiseman

JIM T. HAMILTON, Individually and in his
judicial capacity as
Circuit Judge, Jointly and severally and The
CIRCUIT COURT OF LAWRENCE COUNTY

ORDER

For the reasons in the Memorandum contemporaneously filed herewith, the application for extraordinary releif is denied and the case is dismissed on the Court's own motion. No process shall but a copy of this memorandum and Order will be mailed to defendants.

Plaintiff Polyak is expressly enjoined from filing any further actions in this Court regarding

partition sale of property in Lawrence County
without the express permission of this Court.

Signed Thomas A. Wiseman

THOMAS A WISEMAN JR.
CHIEF JUDGE

Note:

The letter written to John P. Hehman, Clerk
of the United States Court of Appeals by the
Honorable Thomas A. Wiseman on April 30, 1986.
Petitioner believes this letter is important to
this case and it is copied in its entirety on
page 13 of this Appendix.

Petitioner believes that the Honorable
Thomas A. Wiseman is referring to the division of
the United States District Court, in which he
presides located in the same building as the
State Court in Columbia, Tennessee.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK
Plaintiff

Stamped by Court
1 85 0116

VS

CIVIL ACTION NO.

JIM T. HAMILTON , Individually and
in his judicial capacity as Circuit
Judge, Jointly and severally, and
THE CIRCUIT COURT OF LAWRENCE COUNTY

PROTECTIVE ORDER

The above entitled matter having come to be considered by a request for a Restrictive Order on the 7th day of November 1985, from Plaintiff, and having examined the request and exhibits duly verified by the Plaintiff, the Court finds that said Plaintiff is entitled to a Protective Order to be issued by the Clerk.

IS IS THEREFORE ORDERED, that Plaintiff Earlene Polyak retain an order out of this Court preliminarily and permanately enjoining Defendants from any further acts of wrongdoing, intimidation or retaliation, during her travel and care of her property in Tennessee. And that she be allowed to present herself in this Court when, and if her health and ~~w~~ weather permits.

On the day of November, 1985.

JUDGE _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EARLENE POLYAK
Plaintiff

Stamped by Court
1 85 0116

VS

CIVIL ACTION _____

JIM T. HAMILTON, Individually and
in his judicial capacity as Circuit
Judge, jointly and severally, and
THE CIRCUIT COURT OF LAWRENCE COUNTY

RESTRAINING ORDER

The above entitled matter having come to be considered by a Request for a Restraining Order on the 7th day of November, 1985, from Plaintiff Earlene Polyak, and having examined Request for a Restraining order and exhibits, duly verified by Defendant, the Court finds that said Plaintiff is entitled to a Restraining Order to be issued in the office of the Clerk.

IT IS THEREFORE ORDERED, Defendants, heirs, attorneys or anyone associated with, or employed by the above named be restrained from seizure, sale by any means including Public Auction, or damage to any and all of Plaintiff's real and personal property located on Marcella and Jonestown Roads in the 14th Civil District of Lawrence County Tennessee.

On this day of November, 1985.

JUDGE _____

IN THE CIRCUIT COURT OF LAWRENCE COUNTY, TENN

BUFORD EVANS 7 sons

vs

CIVIL ACTION NO.: 10657

EARLENE POLYAK

O R D E R

This case came on to be heard and was heard before the Honorable Jim T. Hamilton, on plaintiffs Motion to Forward records of this case from the Circuit Court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED to the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985. -

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE
PART 1

COPIED MAILED TO:
Mr. Larry Brandon
Attorney at law
Murfeesboro, Tennessee 37133

Mr. Ramsey Leathers Clerk
100 Supreme Court Building
Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

RE: BUFORD EVANS

VS

EARLENE PLOYAK

We are returning herewith the copy of the notice of appeal forwarded to this office in the above case.

An amendment to Rule 5 (a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the notice of appeal be filed with the clerk of the appellate court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk